

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 215 of 1995

with

SP. CIVIL APPLICATIONS No 12306, 12307, 12519, 12606,  
12841 and 13450 of 1994

and

SP. CIVIL APPLICATIONS No 2296 of 1996 and 2274 of  
1997

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be  
allowed to see the Judgment ?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the  
fair copy of the Judgment ?
  4. Whether this case involves a substantial  
question of law as to the interpretation of  
the Constitution of India, 1950 of any Order  
made thereunder?
  5. Whether it is to be circulated to the Civil  
Judge?

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B N TRIVEDI  
VERSUS  
STATE OF GUJARAT

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Appearance:

MS KETTY A MEHTA for Petitioners  
MR SP HASURKAR for Respondents

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CORAM : MR JUSTICE S.K. KESHOTE

Date of Decision : 30/12/1999

C.A.V. JUDGMENT

1. As in all these special civil applications, common questions of law and fact arise and in fact these are the petitions filed by the petitioners of common service and challenging identical orders, the same are being taken up for hearing together and are being disposed of by this common judgment.

2. The petitioners in these special civil applications joined the services in Accounts and Treasury Department of the Government of Gujarat between 1955 to 1965 in Group III services. The details of service particular of the petitioners are given in annexure 'A' of the special civil application No. 215 of 1995. Vide circular dated 20th November, 1962, the Government of Gujarat provided that an officer could be granted higher grade or selection grade and for this the test applied should be same as for promotion to the higher post. Under the order dated 27th April, 1977 the petitioners along with other officers in Group III and Group II were given selection grade. Under the order dated 19th June, 1987, of the Finance Department, selection grade was discontinued and new scheme of stagnation increment was introduced. Later on the selection grade which has been given to the petitioners was taken away and that order of the respondents was challenged by the petitioners by filing special civil applications No. 5893 to 5898 of 1991 and 5904 to 5918 of 1991. Those petitions came to be allowed by this court on the ground that the petitioners were not given any notice and opportunity of hearing. After giving opportunity of hearing to the petitioners under the order dated 15th October, 1994, the respondents have maintained their earlier order. Hence, these special civil applications before this court.

3. Learned counsel for the respondents submitted that these matters are squarely covered by the decision of this court given in special civil application No. 8233 of 1995 dated 10th July, 1997 ( Coram : R.M. Doshit, J ).

4. Ms. Ketty A Mehta, learned counsel for the petitioners very fairly submits that the three points which are raised by the petitioners in these special civil applications are covered by the judgment aforesaid

but two additional points which were not decided earlier are to be decided by this court. Mrs. Ketty A Mehta submits that the three points which are covered by the decision aforesaid are as under:

- (i) Passing of the Departmental exam is necessary for selection grade.
- (ii) Whether Exam Rules provide for qualifying exam only for promotion and not selection grade.
- (iii) Under Rule 57-A Government is not entitled to recover the excess amount of salary paid to the petitioners on grant of selection grade.

5. The additional points which Smt. Ketty A Mehta raised are as follows:

- (i) G.R. dated 10-2-1976 at page no. 35 to the petition is ultravires to Articles 14 and 16 of the Constitution as effect is given to it from 17th February, 1975 onwards which has no rationale.
- (ii) By resolution dated 19th June, 1987, annexure G at page NO. 50, of the special civil application, new scheme of stagnation increments applied to the petitioners. The petitioners what Smt. Mehta contends are entitled to stagnation increments from 19th June, 1987 as for the entitlement there of there is no bar of passing of qualifying examination as provided for promotion. The petitioners were not given stagnation increment so far and as such necessary directions be issued for giving of same to them.

6. Another contention has been raised that under G.R. dated 20th December, 1991, exemption from passing qualifying examination has been granted to those who are more than 45 years of age on 5th July, 1991 or before that date and therefore w.e.f. 5th July, 1991, if the petitioners are of more than 45 years of age and have not passed the qualifying examination they are entitled to selection grade.

7. Learned counsel for the respondents submitted that the G.R. dated 19th June, 1976 is not ultravires. The cut off date has to be fixed and if the cut off date is fixed 17th February, 1975 to which no exception can be taken. So far as the second contention is concerned,

learned counsel for the respondents submits that for stagnation increments also, the same criteria will apply which has to be applied for promotion. The stagnation increment can not be given as a rule or right. Lastly, it is contended that G.R. dated 20th December, 1991, is applicable to those persons who attained the age of 45 years on or before 5th July, 1991 and if any of the petitioners fall under that exemption limit they will get this benefit.

8. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

9. The decision of this court given in special civil application No. 8233 of 1995 (supra) is very clear and for selection grade the passing of departmental examination is necessary. The qualifying examination which has been laid down for promotion has to be qualified for selection grade also. The selection grade though is not strictly a promotion but nevertheless an officer has to be given the higher pay scale and it has to be done on some criteria and normally the criteria laid down for promotion may be applied where the criteria is seniority-cum-merit. However, the selection grade were given to the petitioners by the respondents. The petitioners have not snatched the selection grade and as such if ultimately it has decided that erroneously the same has been given to the petitioners, I fail to see how far it is justified for them to make recovery of the excess amount paid to the petitioners for the period from the date of grant thereof to the date of the order passed for cancellation of the same. Further discussion on this point I would like to make in later part of this judgment.

10. The contention of the learned counsel for the petitioners that the G.R. dated 10th February, 1976 is ultravires of Articles 14 and 16 is wholly devoid of any substance. Under this resolution, it has been provided that the criteria to be applied to non-gazetted cadre for grant of selection grade should be the same as is applicable to gazetted cadres and as prescribed by the Government circular, General Administration Department NO.CDR-1062-300-0 dated 20th November, 1962 i.e. the test applied for promoting a Government servant whether gazetted or nongazetted to selection grade should be the same as that for promotion to a higher cadre of service, so far as standard of confidential reports, passing of departmental examinations etc. are concerned. It has been provided that the cases decided in the light of

instructions issued in Government Resolution, dated 17th, February, 1975 till the date of issue of this Government resolution should not be reviewed, reconsidered or re-opened for determination now according to these revised orders. The selection scales were given to the petitioners after 10th February, 1976 which is clearly borne out from annexure 'A'. Leaving apart the question of validity of the circular on the ground as raised by the learned counsel for the petitioners, it is suffice to say that otherwise also it is hardly of any help to the petitioners. It is understandable where the selection grade would have been given to the petitioners prior to 10th February, 1976. As this resolution otherwise also has no relevance and effect in the case of the petitioners, I do not consider it to be necessary and proper to go on this contention further and decide the same with reference to provisions of Articles 14 and 16 of the Constitution.

11. The second contention raised by the learned counsel for the petitioners deserves acceptance. From the resolution dated 19th June, 1987, annexure 'G' I find that as a consequence of abolition of selection grade w.e.f. 1-1-1986 in its place the scheme of stagnation increment has been introduced. It is provided that one stagnation increment shall be allowed to all employees who stagnate at the maximum of their revised scales of pay as sanctioned under the GCS (ROP) Rules, 1987 for every two years or more on or after 1st January, 1988, a maximum of three such increments shall be allowed. Clause-3 of this resolution provides that the stagnation increment will be equal to the last increment and shall be treated as personal pay. Clause-5 of this resolution lays down that on subsequent promotion to higher posts the pay in the higher post shall be fixed with reference to basic pay in the lower post excluding the personal pay (stagnation increment). However, if pay plus personal pay (stagnation increment) in the lowest post is higher than the pay fixed in the higher post, the difference shall be allowed as personal pay.

12. From the scheme of this resolution I find that as a result of abolition of the selection grade, stagnation increment has been provided so that the employees and officers may not stagnate. It is not the promotion or the case of grant of higher pay scale and for entitlement of the same, I do not find any justification more so any rationale to insist to pass through the consideration for promotion or selection grade. This stagnation increment will be taken to be

personal pay meaning thereby, in case he is promoted then for the purpose of fixation of pay in the higher pay scale, the basic pay of the lower post plus special pay (stagnation increment ) will not be taken to be the pay where if stagnation increment benefit will be available to the officers and employees on their promotion. In case where without promotion an officer or an employee retires certainly he will get the benefit of stagnation increment for pension and family pension. During the course of services as a result of stagnation increment he will get other benefits i.e. D.A., H.R.A., C.L.A., T.A., L.T.C. on the basis of these increments. But merely because these benefits are available on stagnation increment it can not be taken to be akin to the promotion or grant of selection grade and the consideration and other eligibilities which are to be gone into and fulfilled by the concerned employee/officer for entitlement of promotion and selection grade can not be made applicable for the grant of stagnation increment. Otherwise also, I do not find anything in the resolution aforesaid where the State Government has provided that for entitlement of stagnation increment, concerned employee/officer has to pass through the process of consideration which are to be made applicable in the case on grant of promotion or selection grade. In the case of selection grade and promotion there are specific provisions laid down and which is clearly borne out in this case from the resolution of the Government dated 10th February, 1976. In the case of higher pay scale which has to be given either by promotion or selection scale there may be some semblance of justification to adjudge the eligibility and suitability of the employee/officer for entitlement thereof but not for stagnation increment. Insistence of the State Government for grant of stagnation increment only on the concerned employee is found eligible and suitable for promotion or selection grade is wholly arbitrary and unjustified and the second contention made by the learned counsel for the petitioners deserves acceptance.

13. So far as the third contention is concerned, it is suffice to say that it is devoid of any merits and substance. This exemption of passing of the qualifying examination has been granted in the context of conferment of benefits of higher pay scale under higher pay scheme on completion of 9 years, 18 years and 27 years of services. In view of this fact, this claim of the petitioners that those who have completed 45 years of age after 5-7-1991 they are to be exempted from passing of the qualifying examination for selection

grade also is devoid of any substance. In such matters it is always open to the authorities to provide the exemption from passing of exams and this exemption has been provided from some date and to this cut off date no exception can be taken. The benefits of higher pay scale has been introduced in the State of Gujarat under the resolution dated 5th July, 1991 and accordingly this cut off date has been fixed. Learned counsel for the petitioners has failed to show how it can be taken to be irrational cut off date fixed under this resolution.

14. Now the question which falls for the consideration is for what relief the petitioners are entitled in these cases. The selection grade which has been given to the petitioners was cancelled under the order dated 11-7-1991. That order has been challenged by the petitioners before this court by filing special civil applications and those special civil applications were decided and the matters were sent back to the respondents to pass appropriate orders after hearing the petitioners and this order has been passed on 15th October, 1994. There are three date which are very important. First is 11th July, 1991, second the date on which the earlier petitions were decided by this court and third 15th October, 1994 when the fresh order has been passed of the cancellation of selection grade given to the petitioners. It is not in dispute between the parties that in the earlier litigation this court protected the petitioners by grant of interim relief meaning thereby, they have continued to get the benefit of selection grade. The court has found the illegality in the action of the respondents in passing of the order dated 11th July, 1991 and the petitions were decided in favour of the petitioners and liberty has been given to the respondents to pass fresh order after giving notice and opportunity of hearing to them. This order has been passed on 15th October, 1994. Now the question which falls for the consideration is whether the recovery of the excess amount paid to the petitioners upto 15th October, 1994 can not be permitted to be made by the respondents or the recovery of the excess amount paid upto 11th July, 1991 is not permissible. This court has decided on 10th July, 1997 in the special civil application No. 8233 of 1995 that the difference of selection grade and the original grade can not be recovered. Learned counsel for the petitioners contended that in these matters also, this court has protected the petitioners by grant of interim relief in terms of para-21 (D). Para- 21 (D) reads as under:

That, pending hearing and final disposal of this

writ petition, the execution, operation and implementation of the impugned order dated 15-10-1994, annexure-I to the petition be stayed and the respondents herein be restrained from recovering the amount of selection grade pay already granted to the petitioners, and be further restrained from reducing the pay scale of the petitioners by cancelling the selection grade granted to them by the respondent No.2 earlier.

15. Smt. Mehta submits that in pursuance of this interim order granted by this court, the petitioners are getting the benefit of selection grade till this date. In her submission, the respondents may be restrained from making recovery of the difference of the amount of the pay scale of the post and that of the selection grade till the date of decision of these special civil applications.

16. I do not find any substance in this contention of the learned counsel for the petitioners. The interim relief which is granted by this court is always subject to final decision in the case. The order of grant of interim relief merges in the final order. Interim relief is only a relief granted to the petitioners during the pendency of the special civil applications and it is not the relief which has been granted after adjudication of the dispute and accepting the claim of the petitioners to be legal and sustainable. Interim relief stands merged in the final decision of the court and if final decision is not in favour of the petitioners, this decision can not be taken to be operative only from the date of pronouncement thereof. It will relate back to the date on which the interim relief has been granted or the date on which the impugned order has been passed because the action of the respondent is held to be valid. If the contention of the learned counsel for the petitioners is accepted then though ultimately the claim of the petitioners has not been accepted on merits by this court but as they have been protected by grant of interim relief they will get the benefit. This will create chaos and it will give unjust enrichment to the petitioners. Though this order of cancellation of grant of selection grade given to the petitioner was ultimately found to be invalid by this court but still because of interim relief they continued to get this benefit, they will retain this benefit meaning thereby there will be contradictory decision of this court i.e. the final decision and the order which has been given in the shape of interim relief. So from



the date of grant of interim relief and the date of final decision this order will be taken to be legal to the extent of conferring the benefits to the petitioners and from the date of final decision it will be taken to be illegal. This is not the law nor it is just and reasonable approach also. The petitioners can not be given any benefit of this interim relief. The recovery of the excess amount paid to them i.e. the difference of their pay of the post and the selection grade till the order dated 15th October, 1994 is passed, can not be made by the respondents from the petitioners.

17. As a result of the aforesaid discussion, all these special civil applications succeed in part. Though the order dated 15th October, 1994 of the respondents is held to be legal and valid, but the respondents are restrained from recovering the excess amount i.e. the difference of the pay of the post and the selection grade for the period upto 15th October, 1994 from the petitioners. The petitioners shall be entitled for stagnation increment as per the Government G.R. dated 19th June, 1987, annexure 'G'. The respondents are directed to pass appropriate orders for grant of stagnation increment as per the entitlement of the petitioners in pursuance of the aforesaid resolution within a period of two months from the date of receipt of writ of this order and arrears of fixation as a result thereof be adjusted against the recovery to be made from the petitioners. All the special civil applications and Rule therein stand disposed of accordingly with no order as to costs.

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